



June 26, 2023

The Honorable Sarah Netburn  
United States Magistrate Judge  
Southern District of New York  
Thurgood Marshall Courthouse  
40 Foley Square Room 430  
New York, NY 1000

Re: *Lynne Freeman v. Tracy Deeks-Elkenaney et. al.*, Case No. 22 Civ 2435 (LLS) (SN)

Dear Judge Netburn:

We represent the Plaintiff, Lynne Freeman, in the above captioned matter. We are writing for clarification of an issue we raised at the June 2, 2023 hearing before Your Honor on Defendants' request that the Court streamline the case by suspending remaining expert discovery and ordering immediate dispositive briefing on the issue of whether the *Crave* series and *BMR* are substantially similar ("Request to Streamline the Case").

At the beginning of the June 2, 2023 hearing, Plaintiff's counsel raised with Your Honor the issue of, at the very least, the appearance of impartiality because of Your Honor not making certain disclosures at the beginning of the case. On July 20, 2022, at the first hearing in this matter, Your Honor disclosed that she knew "Ed Klaris who is the namesake of Klaris Law," the law firm that represents two of the defendants in the case. *See* Transcript of July 20, 2022, hearing, p.5, attached as Exhibit "1" to the Declaration of Lynne Freeman ("Freeman Decl") being submitted simultaneously herewith. Mr. Koonce then added that he had a case in which Your Honor's husband's firm was conflict counsel. *Id* at p. 6. Based on those disclosures, Plaintiff waived any conflict.

However, Plaintiff would not have waived the conflict had she known all the facts. Freeman Decl., ¶ 5. Plaintiff's counsel pointed out at the June 2, 2023 hearing that Your Honor did not disclose that Mr. Koonce was previously law partners with Your Honor's husband at Davis Wright Tremaine. *See* Transcript of June 2, 2023, hearing, pp. 5-6., attached as Exhibit "2" to the Freeman Decl. We also recently learned that Your Honor's husband himself was an attorney of record in the above referenced action. *See* Resolute Forest Products, Inc., et al. v. Greenpeace International, et al., Case No. 17-cv-02824-JST (USDC N.D. Cal.). Your Honor stated at the hearing that she would take the oral application to recuse herself under advisement. *Id.* at p.9.

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Although we have not heard back from Your Honor on the issue, the ruling on Defendants' Request to Streamline the Case was ruled on by Judge Stanton as opposed to Your Honor. Thus, Plaintiff is hereby seeking clarification as to whether Your Honor has recused herself from the case. If so, we would appreciate your advising us as to whom any future discovery disputes should be addressed.

If Your Honor has not recused herself, we respectfully request that Your Honor do so because Plaintiff would not have waived any conflict had she received a full disclosure of the facts recited above. Moreover, Plaintiff is concerned that Your Honor may not be impartial based on, among other things, statements made by Your Honor at the June 2, 2023 hearing after Your Honor asked the Court Reporter to go off the record.

Your Honor stated that Plaintiff is at risk and she needs to make a reasonable settlement offer – not a \$10 million offer. *See* Freeman Decl. ¶6. The foregoing evidences a bias against Plaintiff, especially because Your Honor does not know the value of the case. *Id.* Indeed, Plaintiff is unable to make a settlement offer because even she does not know the full value of the case since discovery on damages has not been completed. *Id.* at ¶7.

Your Honor has allowed Defendants to delay updating their damages discovery until after there has been a ruling on their proposed motion for summary judgment. *Id.* Nonetheless, based on the information gathered to date by Plaintiff, she is confident that her damages are in excess of \$10 million. *Id.* Based on the foregoing statement and others made by Your Honor, Plaintiff believes, at the very least, there is an appearance of impropriety, and, respectfully requests Your Honor recuse herself.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

**Reeder McCreary, LLP**



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cc: All counsel of record (via ECF)